

Psych Patient Claims Sexual Assault By Psych Patient: Nursing Negligence Alleged In Lawsuit.

The Supreme Court of Virginia recently ruled a psychiatric facility and its nurses can be sued by a female psychiatric patient who is sexually assaulted by a male patient on the same acute care psychiatric unit.

At the trial-court level the patient's lawsuit was dismissed as having no legal foundation, effectively denying her day in court to try to prove her case.

The Supreme Court disagreed, but only went so far as to rule that the lawsuit was based on solid legal concepts. In fairness to both sides the court could not say whether the events alleged in the patient's lawsuit were true. It ruled only that the patient was entitled to her day in court to try to prove her case to a civil jury.

The patient's lawsuit claimed the assailant was known as likely to victimize others and that the victim herself was known as susceptible to being victimized.

The court record was sketchy as to what specific prior conduct by the assailant was supposed to have put the nurses on notice of his propensity to harm others. The court said the patient was bipolar and had a history of sexual victimization.

The court did rule in general terms that combination would call for a special level of concern from a psychiatric nurse.

A cover-up which the court found disturbing was also alleged. Only the assailant's unauthorized presence in the victim's room was charted, not the sexual assault claim, and it was noted only in the victim's chart, not in the assailant's.

How the victim was dealt with after the alleged assault would account for her emotional distress and could be a major reason for a jury to award damages to her.

No medical care or psychological counseling was offered her as the victim of a fresh sexual assault. The court said the absence of such care and counseling would be particularly disturbing if as claimed the assailant was known to be HIV positive. **Delk v. Columbia/HCA Healthcare Corp.**, 523 S.E. 2d 826 (Va., 2000).

It is nursing negligence not to protect a female patient if the psychiatric staff nurses are aware a male patient is a threat of victimizing others and the female patient has a special risk of being victimized.

The victim and the assailant were both involuntary patients on the facility's psychiatric acute care wing.

The patient's lawsuit claimed the nurses knew before the fact the assailant had a predisposition to victimizing others, from his troubled psychiatric history and from his disturbing interactions the nurses had seen with other patients.

The patient's lawsuit also claimed she herself had a significant history of sexual victimization, including child sexual abuse and a gang rape as a teenager, which would put a special duty on the nurses to protect her.

It would be intentional infliction of emotional distress not to care for her as a sexual assault victim and to try to cover it up.

A jury could award substantial damages against the nurses' employer if the patient's lawyers can prove these allegations.

SUPREME COURT OF VIRGINIA, 2000.

Latex Allergy: Court Upholds Nurse's Claim Of Industrial Injury.

A registered nurse began to notice symptoms of a latex allergy. She contacted an allergist and her allergist sent her for a second opinion.

Both physicians agreed she contracted the latex allergy from exposure to latex products at work. They agreed she had to avoid latex products even if it meant never again working directly with patients.

She complied and took an office position with an insurance company.

The nurse's latex allergy arose on the job and is considered an industrial injury.

She is working now and is employable in other settings, but due to her latex allergy she can no longer work directly with patients.

The nurse is entitled to worker's compensation.

Based on her physicians' reports she has a thirty-five percent permanent partial disability and is entitled to a commensurate award.

SUPREME COURT OF IOWA, 2000.

The nurse filed for worker's compensation for an occupational disease. She got an award but the hospital appealed.

The Supreme Court of Iowa ruled a nurse's latex allergy is not an occupational disease, but if it comes from exposure to latex in the nurse's workplace it would be considered an industrial injury and compensation would be available on that basis.

The nurse qualified for a permanent partial disability payment, even though she was employable and was working, as she could no longer do direct patient care. **St. Luke's Hospital v. Gray**, 604 N.W. 2d 646 (Iowa, 2000).